



Practitioner's Docket No. DC4974

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: B. K. Hwang et al.

Application No.: 09/995,985

Group No.: 1762

Filed: November 19, 2001

Examiner:

For: COMPOSITIONS AND METHODS FOR FORMING DIELECTRIC LAYERS USING A COLLOID

Box DAC

Assistant Commissioner for Patents

Washington, D.C. 20231

Void date: 09/26/2002 SSESHE1

09/26/2002 SSESHE1 00000052 041520 09995985

02 FC:115 110.00 CR

ATTENTION: Petition Information

Crystal Park One, Suite 520

(M.P.E.P. § 1002.02(b), 6th ed., rev. 3)

PETITION FOR REVIVAL OF AN APPLICATION
FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 C.F.R. § 1.137(a)

NOTE: "In a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995, any petition to revive pursuant to this section must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any terminal disclaimer pursuant to this paragraph must also apply to any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought. The provisions of this paragraph do not apply to lapsed patents." 37 C.F.R. § 1.137(c).

1. Applicant petitions for the revival of the above-identified application.

NOTE: Extensions under 37 C.F.R. § 1.136 are available only if asked for "prior to or with the response." Accordingly, if the question of abandonment arises when the provisions of § 1.136 can no longer be used then the application is abandoned when the unextended time for response has expired. See Notice of July 9, 1985 (1056 O.G. 60-61). Thus: An application which is abandoned for failure to respond within a set period with no extension fee having been paid, would not require the payment of extension fees as a condition for revival.

2. Nature of abandonment:

(check appropriate box and complete)

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☐ In an office communication from the PTO dated _____, the undersigned has noted that the above-identified application is being forwarded to the Abandoned Files because applicant's response to the Official Action mailed _____ has not been received within the statutory period or any extension requested therefor.

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a))

I hereby certify that this correspondence is, on the date shown below, being:

MAILING

☒ deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

FACSIMILE

☐ transmitted by facsimile to the Patent and Trademark Office.

Date:

9/19/02

Signature

Kelly J. Smith

(type or print name of person certifying)

09/26/2002 SSESHE1 00000131 041520 09995985

01 FC:122

130.00 CH

(Petition to Revive Application Abandoned Unavoidably [11-4]—page 1 of 3)

09/26/2002 SSESHE1 00000052 041520 09995985

02 FC:115 110.00 CR

- ☒ The undersigned has reviewed his records and noted that the response to the Official Action mailed 12/28/2001 was not timely filed within the statutory period or any extension requested therefor.

3. Response filed:

NOTE: The response does not require a request and fee for extension of time as a condition of revival. Notice of July 9, 1985 (1056 O.G. 60-61).

The proposed response to the Official Action mailed _____

☐ has been filed on _____.

☒ is enclosed herewith.

4. Showings from the relevant parties as to the causes of the unavoidable delays are filed herewith; said showing establishes that the entire delay in filing the required reply from the due date for the reply until the filing of this petition was unavoidable. 37 C.F.R. § 1.137(a)(3).

5. It will be seen from the attached showings that the processing procedures have been carefully reviewed and that steps have been taken to avoid repetition of the events which took place in this case so that a similar error will not be made in the future.

6. Terminal disclaimer 37 C.F.R. § 1.137(c):

☐ application filed before June 8, 1995

or ☐ design application

Abandonment took place on the following date _____ and:

☐ A terminal disclaimer equivalent to the period of abandonment of the application until the date of this petition is attached.

7. Status of applicant:

This application is on behalf of

☐ small business entity—fee \$55.00

☐ statement already filed on _____

☐ statement attached.

☒ other than a small business entity—fee \$110.00

NOTE: The fee is set in 37 C.F.R. § 1.17(f).

8. Fee payment:

- ☐ Attached is a ☐ check ☐ money order in the amount of \$ _____
- ☒ Authorization is hereby made to charge the amount of \$ 110.00
- ☒ to Deposit Account No. 04-1520
- ☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

WARNING: Credit card information should *not* be included on this form as it may become public.

- ☒ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

9. *(complete the following, if applicable)*

- ☐ Because this petition is more than 3 months after the date the Office first notified the applicant that the application is abandoned, applicant additionally submits a showing as to how the delay between the date the applicant was first notified that the application is abandoned and the filing of this petition under 37 C.F.R. § 1.134(b) was unintentional. 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997).
- ☐ Because this petition is more than 1 year after the date of abandonment of the application, applicant additionally submits further information as to when applicant (or applicant's representative) first became aware of the abandonment of the application, and a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative). 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997).

Reg. No.: 34,010

Tel. No.: (989) 496-8120

Customer No.:

Sharon K. Severance
SIGNATURE OF PRACTITIONER

Sharon K. Severance

(type or print name of practitioner)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of) Group Art Unit:
B.K. Hwang et al.)
)
Serial No: 09/995,985)
)
)
Filed: November 19, 2001) Petition to Revive for Unavoidable
) Abandonment
) 37 CFR 1.137(a)
Title: Compositions and Methods for)
Forming Dielectric Layers Using a)
Colloid)
)
Docket Number: DC4974) Dated: September 18, 2002

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Facts Relating to Unavoidable Abandonment

On or about October 5, 2001, the individual responsible for providing patent docketing at Dow Corning ("docket clerk") left the company. Due to a workforce reduction program that had been implemented a new employee could not be hired to replace this person. The responsibilities of the docket clerk were transferred to a senior level office professional. The senior level office professional had less than two weeks of hands on training with the docket clerk before the she left.

To help the office professional with her workload a contract worker was also hired. One of the responsibilities of the contract worker was to open the incoming mail coming from the U.S. PTO, locate the case folder associated with the mail item and place mail item with the case folder. When the item received was a Filing Receipt, the contract worker was instructed to

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SEP 26 2002

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review the Filing Receipt for accuracy. If no corrections the Filing Receipt were needed she was to place the Filing Receipt in the case folder and return the case folder to the files. All other items were to be given to the office professional who would enter the item into an electronic docketing system with the appropriate due date and action due.

Neither the office professional, the contract worker or their supervisor were aware that the US PTO was mailing Notice of Missing Parts on letter size paper and/or that they would come with the Filing Receipt. Thus, the contract worker had not been instructed to look at all the pages attached to the Filing Receipt.

In approximately March 2002, due to further workforce reductions, the docketing duties were transferred to a full time docket clerk and the responsibility for reviewing Filing Receipts was assigned to the Office Professional of the attorney/agent who filed the application. A college co-op assists the docket clerk by opening the mail, locating the file, placing the item with the file and either giving it to the office professional (Filing Receipt) or Docket Clerk.

On or about September 13, 2002, Shelly, an office professional for Dow Corning Corporation, was reviewing a Filing Receipt for accuracy. She noticed that the document appeared unusually thick. She reviewed the accompanying documents and realized that there was also a Notice of Missing Parts. She took the Notice of Missing Parts to the docket clerk and informed her of this situation.


On or about September 13, Kelly, an office professional for Dow Corning Corporation, was preparing the instant application for foreign filing. Upon reviewing the U.S. case folder she discovered that the original signed declaration and assignment were still in the case folder. However, there was nothing in the docketing system or on the case folder to indicate that a

Notice of Missing Parts had been received. Since she had just heard about Shelly discovering the Notice of Missing Parts with the Filing Receipt described above she reviewed the Filing Receipt documents in the case folder. She found the Notice of Missing Parts attached to the Filing Receipt and located in the case folder. The Filing Receipt was received on or about January 7, 2002.

Kelly then took the application to the assigned attorney. Upon hearing about this situation, Kelly, the assigned attorney and their supervisor immediately reviewed all applications filed in the last 18 months where they were aware that the declaration has not been mailed at the time of filing to see if there were additional applications where this occurred. The above discovered that this had occurred in two other applications. The applications were then given to the responsible attorney/agent to determine if a timely response could still be made or if the applications had become abandoned. Procedures were also implemented for the college co-op to review all pages of the Filing Receipt to determine if there is a Notice of Missing Parts attached. If the co-op locates a Notice of Missing Parts the file is given to the Docket Clerk and a docket entry is made.

It is believed that the abandonment of this application was unavoidable. Applicant respectfully requests that the above application be revived.

Respectfully Submitted,
DOW CORNING CORPORATION


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